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OFFICE OF PETITIONS

In re Application of
Ernest Rehmi Post, et. al.
Application No. 10/802,998
Filed: March 17, 2004
Attorney Docket No. E-09

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed March 16, 2009, to revive the above identified application.

The application was held abandoned for failure to timely file a reply to the Notice to File Corrected Application Papers (Notice) purportedly mailed September 21, 2007. A Notice of Abandonment was mailed January 7, 2008.

Petitioner asserts that the Notice mailed September 21, 2007 was never received.

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lack items (1).

With respect to item (1), the record fails to show that petitioner submitted the required reply to the Notice mailed September 21, 2007. Therefore, revival under 37 CFR 1.137(a) cannot be granted. On the other hand, petitioner has an alternate remedy under the provisions of 37 CFR 1.181 (no fee) requesting that the abandonment for the above application be withdrawn.

MPEP 711.03(c), under the subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action" states the showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A

copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

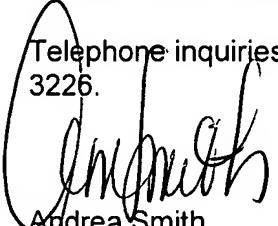
Further correspondence with respect to this matter should be addressed as follows:

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The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (571) 272-3226.


Andrea Smith
Petitions Examiner
Office of Petitions


David Bucci
Petitions Examiner